

Australian Catholic University

Feedback to the University Foreign Interference Taskforce

Guidelines to Counter Foreign Interference in the Australian University Sector - Consultation Draft (August 2021)

September 2021

Feedback on the Consultation Draft: Refreshed Guidelines to Counter Foreign Interference in the Australian University Sector

Australian Catholic University (ACU) acknowledges the opportunity to provide feedback to the University Foreign Interference Taskforce (UFIT) on its consultation draft of the refreshed *Guidelines to Counter Foreign Interference in the Australian University Sector* (August 2021) (hereafter “Draft Guidelines”).

ACU supports UFIT’s work to ensure universities can counter foreign interference while also maintaining vital international collaborations. ACU also affirms the advocacy by Universities Australia, which appropriately acknowledges that increased regulation is not the solution to strengthening Australian universities’ defences against foreign interference. Rather, a partnership model with the sector, established through a mechanism such as UFIT, is the most effective means of countering foreign interference in Australian universities.

The Draft Guidelines broadly reflect efforts made by UFIT to pragmatically consider how universities can best respond and encourage utilisation of universities’ existing frameworks and processes where possible.

However, further revision of the Draft Guidelines is necessary to:

- clarify their scope, application and implementation timeline;
- better reflect the underlying intent to adopt a proportionate, risk-based approach to regulation and reporting; and
- avoid regulatory over-reach, particularly with respect to due diligence provisions.

ACU provides the following feedback on the Draft Guidelines.

OBSERVATIONS AND FEEDBACK

ACU’s primary concerns and feedback relate to:

- affirming a proportionate and risk-based application of the Draft Guidelines (Proportionality);
- ensuring due diligence provisions are reasonable, appropriate and in the national interest (Regulatory Scope);
- clarifying how universities will be supported to strengthen their resilience to foreign interference and to meet administrative requirements (Resourcing); and
- when universities will be required to finalise their alignment with the guidelines and implementation of governance and risk management policies and measures (Timeline).

Proportionate and risk-based approach to regulation and reporting

The Draft Guidelines, at the outset, appropriately acknowledge that proportionality of risk underlines the guidelines. However, this is not consistently reflected across the document. The guidelines should be revised to better incorporate this underlying principle in provisions throughout the guidelines. Revisions should make it clear that the guidelines can be *flexibly* adopted, or *adapted*, to suit individual universities’ risk profiles and support the implementation of tailored strategies.

To this end, the wording of the Draft Guidelines should reflect that they are indeed *guidelines* and not mandatory obligations with which all universities must comply uniformly. Currently they are written as obligations rather than as a guide for universities.

For instance, the existing wording indicates that every university – regardless of profile – would need to have the same levels of governance or governance mechanisms, risk management measures and policies in place, across the board as per the provisions stipulated in the guidelines. Instead, universities should be encouraged to focus their efforts on core areas of concern as appropriate to their individual risk profiles. This is the preferred approach which, pragmatically, recognises that university resources are finite, and that the most effective strategy is to encourage proportionate, targeted responses from universities.

The Draft Guidelines, in the introductory commentary, accurately acknowledge:

All universities are subject to foreign interference risks, but their risk profiles will vary depending on the nature of the activities they undertake – for example, universities with significant research programs may be at a higher risk of unwanted technology transfer. Other universities may be at higher risk of challenges to academic freedom.

The Guidelines recognise these differences and encourage universities to adopt measures to mitigate foreign interference risks that are appropriate to their particular risk profile. (Draft Guidelines, p. 5)

ACU is in the fortunate position of being an unlikely target of foreign interference, with its core research foci and areas of international collaboration relating to areas such as health sciences (but not medicine) and education, rather than highly sensitive areas such as information technology, defence science or intellectual property development. Nevertheless, the University recognises there are areas where it can and will continue to concentrate its efforts to bolster its resilience to foreign interference, such as by further strengthening cybersecurity protections across the institution, and ensuring an ongoing process of risk assessment across the university.

While ACU recognises the validity of the Government's underlying concern and supports its intention to reduce the risk of foreign interference in higher education or research, it is important that efforts are concentrated on the areas of genuine risk.

With respect to reporting requirements, the Draft Guidelines appropriately acknowledge that Government's expectations of universities with respect to working to build resilience to foreign interference and associated reporting would essentially be guided by universities, based on how they have responded to the Guidelines:

Universities can use the data and reporting generated from the adoption of these Guidelines to promote their approach to counter foreign interference across the sector and to Government... The Government may also seek assurance from universities that their approach to counter foreign interference align with these Guidelines and is proportionate to their risks. (Draft Guidelines, p. 7)

ACU supports this approach in principle.

Recommendations:

1. Proportionality of risk should be consistently reflected and emphasised throughout the guidelines, as a core underlying principle.
2. The Draft Guidelines should be revised to make it clear that provisions are a *guide* only, and are not mandatory obligations with which all universities must comply uniformly.
3. The Draft Guidelines should affirm that the preferred approach is for universities, when adopting or adapting the guidelines, to initiate proportionate, targeted responses suited to their individual risk profiles.

Due diligence provisions - Core declaration of interest questions

The Draft Guidelines contain provisions pertaining to due diligence, risk assessments and management. This includes the proposal that universities require declaration of interest disclosures from academic staff, including identification of foreign affiliations, relationships and financial interests. Under the Draft Guidelines, declaration of interest policies would, inter alia, set out core Declaration of Interest Questions, as detailed in Appendix 1 of the guidelines:

Core Declaration of Interest Questions relating to Foreign Interference

1. *Are you receiving any financial support (cash or in-kind) for research related activities from a country outside Australia?*
2. *Outline the obligations that you have to any foreign institutions (including other academic bodies, research entities or private industry) or governments. This includes paid and unpaid roles and/or honorific titles with academic bodies, research entities, private industry or governments.*
3. *Outline any associations with foreign political, military, policing and/or security organisations. (Draft Guidelines, p. 19).*

ACU strongly objects to the proposal that universities ask their academic staff to disclose any foreign political affiliations over the past 10 years. ACU echoes the concerns raised from within the university sector in this regard. It appears these provisions have been incorporated into the draft guidelines without considered thought or discussion with universities. The provisions are objectionable not only as they raise issues of privacy (and compliance with relevant legislative requirements) but also as they lean towards significant regulatory over-reach. It is also unclear what universities would be expected to do with this information.

ACU is particularly concerned that the ability of Australian universities to continue to attract and retain international academics may be undermined by such provisions - especially with respect to senior researchers, lecturers, and other specialists who bring a wealth of knowledge and experience to Australian higher education, whether as full-time academics, via joint appointments or under other arrangements.

There is a real risk that senior academics may opt-out of working at Australian universities in favour of universities in other countries where unduly complex and invasive requirements do not exist. Any reduction in the international attractiveness of Australian universities would undermine their competitiveness and, ultimately, the international standing of Australian higher education and research into the future.

Notably, the Draft Guidelines assert:

Working with actors whose legal systems, approaches to academic freedom and human rights that do not align with our own, carries a higher risk of exposure to undue influence or acts that can undermine not only a university's security but also Australia's national interests. (Draft Guidelines, p. 13)

As a basic tenet, however, it is equally important that regulations pertaining to Australian universities uphold the values of a liberal democracy. The rights to freedom of expression and association remain important features of Australian society. Measures that may cause individuals to feel that exercising such rights would, however, potentially be subject to formal record, scrutiny, reporting and possibly even used against them, should be carefully deliberated. To this end, any regulatory provisions should be clearly justified and targeted. Fundamentally, they should be proportionate to the needs and interests of a liberal and democratic society. ACU is concerned the Core Declaration of Interest Questions, particularly pertaining to disclosure of political affiliations as proposed in the Draft Guidelines, are not in the national interest and reflect undue regulatory over-reach.

Recommendations:

4. The provisions in the Draft Guidelines proposing to require academics to declare their political affiliations and financial interests in the past 10 years should be discarded.
5. UFIT should engage in considered consultation with the university sector to revise the Core Declaration of Interest Questions, guided by principles of proportionality.

Resourcing

The Draft Guidelines state the intention is not to create additional regulatory burden on universities (Draft Guidelines, p. 6). Nevertheless, the guidelines entail provisions which would place additional administrative burden on universities. Ensuring alignment with the guidelines and work to strengthen resilience to foreign interference is also an ongoing exercise. This additional administrative burden comes as universities are under significant financial pressure, resulting in a reduction in available resources, and at a time when other administrative and reporting requirements are also being imposed on universities.

As it stands, how universities will be supported to implement appropriate changes to better align with the guidelines and associated reporting requirements, and on what timeline, is not covered in the Draft Guidelines. With respect to government support, Section 5.2 of the Draft Guidelines for example, merely states:

Government will support the sector through raising awareness, sharing information relating to foreign interference and being accessible.

- *Government agencies may be able to help universities identify instances, or attempts, of foreign interference.*

The guidelines should provide more detail on what the Government will be doing and how it will be contributing to efforts to address foreign interference as part of its partnership with the sector. In particular, ACU submits that:

- government should provide additional resourcing and support to assist universities to strengthen their resilience to foreign interference, and to meet associated reporting obligations.

With respect to regulation and reporting requirements, it is important that regulations designed to detect and combat foreign interference do not unduly stifle, or place excessive regulatory burden on, the important work universities do with international partners, especially for research and via international outreach and collaborative programs. Such relationships have been a pivotal component in enabling Australian universities to achieve excellence and build the capacity and reputation of Australia's university sector, features often celebrated by government. Such relationships will be all the more important as Australian universities, and the nation more broadly, seek to recover from the impacts of the coronavirus pandemic and navigate a challenging and competitive post COVID-19 international environment.

Recommendations:

6. The guidelines should provide more detail on what Government will be doing and how it will be contributing the efforts to address foreign interference as part of its partnership with the sector.
7. Government should provide additional resourcing and support to assist universities to strengthen their resilience to foreign interference, and to meet associated reporting obligations.

Implementation timeline

Regarding implementation, there should be acknowledgement that universities need to be afforded sufficient time to align themselves with the guidelines.

ACU submits that:

- clarification is needed on the timeline for implementation of the guidelines, and this should be determined in consultation with universities.

The capacity of individual institutions to respond will vary across the sector. This may depend on institutional size or on the nature of a particular aspect of the guidelines which is being addressed. For instance, the Draft Guidelines contain provisions relating to cyber security. ACU broadly supports these provisions as reasonable measures to, proportionately, mitigate cyber-related business risks.

While the cybersecurity provisions in the Draft Guidelines are reasonable, they also highlight that universities would need to implement a range of measures and be engaged in appropriate risk mitigation activities on a continuous basis. ACU has been engaging in work which is already broadly in line with many aspects of those provisions but notes this is an ongoing exercise (especially in the context of a rapidly changing technological environment and constant advances in technology) and that implementation also takes time. It is particularly important to afford sufficient time for smaller institutions or those with limited resources to make progress with respect to implementation.

Recommendation:

8. Clarification is needed on the timeline for implementation of the guidelines, and this should be determined in consultation with universities.

ATTACHMENT A - Australian Catholic University Profile

Australian Catholic University (ACU) is a publicly funded Catholic university, open to people of all faiths and of none, and with teaching, learning and research inspired by 2,000 years of Catholic intellectual tradition.

ACU operates as a multi-jurisdictional university with nine campuses, across four states, one territory, and overseas. ACU campuses are located in North Sydney (NSW), Strathfield (NSW), Blacktown (NSW), Canberra (ACT), Melbourne (Victoria), Ballarat (Victoria), Brisbane (QLD), Adelaide (SA), and Rome (Italy).

ACU is the largest Catholic university in the English-speaking world. Today, ACU has around 32,000 students and 2,000 staff.¹

ACU is ranked first in Australia when it comes to graduate employment outcomes.² ACU graduates demonstrate high standards of professional excellence and are also socially responsible, highly employable and committed to active and responsive learning.

ACU has built its reputation in the areas of Health and Education, educating the largest number of undergraduate nursing and teaching students in Australia³ and serving to meet significant workforce needs in these areas.

ACU has four faculties:

- Health Sciences;
- Education and Arts;
- Law and Business; and
- Theology and Philosophy.

ACU is committed to targeted and quality research. ACU's strategic plan focuses on areas that align with ACU's mission and reflect most of its learning and teaching: Education; Health and Wellbeing; Theology and Philosophy; and Social Justice and the Common Good.

To underpin its research intensification efforts, ACU has appointed high profile leaders to assume the directorships, and work with high calibre members, in its research institutes.⁴ ACU is a world-leading research university in its priority areas of education, health, and theology and philosophy.

¹ Student numbers refer to headcount figures while staff numbers refer to full-time equivalent (FTE).

² QILT 2020 Graduate Outcomes Survey, Longitudinal, full-time employment (August 2020).

³ Department of Education, Skills and Employment, *2019 Higher Education Data Collection – Students, Special Courses*. Section 8, Table 8.3.

⁴ See Australian Catholic University, 'Research at ACU' via <http://www.acu.edu.au/>.